IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1819 of 1994
With
SPECIAL CRIMINAL APPLICATION No. 67 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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BABALDAS B CHAVDA - Applicant(s)
Versus
BHOLABHAI CHATURBHAI PATEL & 6 - Respondent(s)

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Appearance :
NOTICE SERVED for Applicant(s) : 1,
MR BS PATEL for Respondent(s) : 1 - 6.
- for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/09/2007

ORAL JUDGMENT

1. As common question of facts and law arise in

both the applications, they are being disposed of by this common judgment and order.

2. Special Criminal Application No.1819 of 1994 is filed by the petitioner – original complainant challenging the legality and validity of judgment and order dated 30th July 1994 passed by the learned Special Judge (Atrocity) Mehsana in Special (Atrocity) Case No.42 of 1994, in exercise of powers under Section 321 of the Criminal Procedure Code;1973, permitting to withdraw from prosecution the criminal case filed for the offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against respondent Nos.1 to 7.

Special Criminal Application No.67 of 1996 is filed by the petitioner – original complainant challenging the legality and validity of judgment and order dated 20th January 1995 passed by the learned Special Judge (Atrocity) Mehsana in Special (Atrocity) Case No.136 of 1994, in exercise of powers under Section 321 of the Criminal Procedure Code;1973, permitting to withdraw from prosecution

the criminal case filed for the offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against respondent Nos.1 to 9.

3. Aforesaid two criminal cases were filed by the respective petitioners – original complainant against respondents- original accused for the offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being Special (Atrocity) Case Nos. 42 of 1994 and 136 of 1994. Said cases were committed to the Sessions Court, Mehsana. In the aforesaid Atrocity cases, Special Public Prosecutor, Mehsana submitted applications dated 21.06.1994 before the learned Special Judge, Mehsana for permitting to withdraw aforesaid two cases under Section 321 of the Cr.P.C. by submitting that decision has been taken by the State Government to withdraw the aforesaid cases. That the learned Special Judge, Mehsana by impugned orders dated 30.07.1994 and 20.01.1995 allowed both the applications in respective atrocity cases and

discharged respective original accused persons for the offences alleged against them under Sections 3(1), 5,8, 10 and 20 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Being aggrieved and dissatisfied with the impugned orders passed by the learned Special Judge, Mehsana passed under Section 321 of the Cr.P.C. discharging the accused persons on the basis of the decision taken by the State Government, the petitioners – original complainant has preferred the present petitions under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code.

4. The petitioner - Party-in-person is personally present in the Court and he has made submission. The petitioner has vehemently submitted that learned Special Judge, Mehsana has committed an error in discharging the accused persons for the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in exercise of powers under Section 321 of the Cr.P.C. It is submitted by him that applications were

submitted by the learned Special Public Prosecutor solely on the basis of the decision taken by the State Government and considering the provisions of Section 321 of the Cr.P.C., it is prerogative of the learned Public Prosecutor and it will be his subjective satisfaction to withdraw criminal cases and from the applications it does not disclose that the learned Public Prosecutor was satisfied with regard to withdrawal of the criminal cases on germane grounds. It is submitted that as such as held by the Hon'ble Supreme Court in the case of ***Subhash Chander Vs. the State (Chandigarh Admn.) and others,*** reported in *AIR 1980 S.C. 423*, learned Public Prosecutor is not bound to accept the decision of the State Government to withdraw the criminal cases. It is only on the basis of subjective satisfaction of the learned Public Prosecutor and on germane grounds, prosecution can be withdrawn by him and that too with the consent of the concerned Court. It is also further submitted by him that even otherwise on merits also decision to withdraw the criminal proceedings against the respondent – original accused is not justified and/or same is not in public

interest, more particularly considering the Special Act which is for the benefit of the persons belonging to the Scheduled Castes and Scheduled Tribes. Under the circumstances, it is requested to allow the present applications.

5. On the other hand, Mr.B.S.Patel, learned Advocate appearing on behalf of the respondents has tried to support the impugned orders passed by the learned Special Court(Atrocity), Mehsana and has submitted that when the State Government has taken decision to withdraw proceedings and accordingly applications were submitted by the Public Prosecutor and; that said applications were submitted under Section 321 of the Cr.P.C. and the learned Special Court has discharged the accused persons considering the pursis, same is not required to be interfered by this Court. Therefore, it is requested to dismiss the present applications.

6. Mr.M.R.Mengdey, learned APP has submitted to pass an appropriate order considering the decision of the Hon'ble Supreme Court in the case of Subhash

Chandar (supra).

7. Heard the learned Advocates appearing on behalf of the respective parties.

8. At the outset, it is required to be noted that all the accused persons were charged for the offences punishable under Sections 3(1), 5,8, 10 and 20 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; all the accused persons were charge-sheeted and the case was committed to the learned Sessions Court(Special Court). It appears from the pursis submitted by the learned Public Prosecutor that the learned Public Prosecutor submitted applications for withdrawal of aforesaid proceedings / criminal cases under Section 321 of the Cr.P.C. solely submitting that the State Government has taken a decision to withdraw aforesaid cases. From the bare reading of the aforesaid pursis, it does not borne out that the learned Public Prosecutor was satisfied and that it is his own subjective satisfaction with regard to withdrawal of the aforesaid criminal cases. Under sec.321 of the Code of Criminal Procedure, Public Prosecutor or

Assistant Public Prosecutor in charge of a case may, with consent of the court, at any time before the judgment is pronounced, withdraw from the the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences and if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

Sec.321 has been considered and interpreted by the Hon'ble Supreme Court in the case of Subhash Chander Vs. State (Chandigarh Admn.) and others, reported in AIR 1980 S.C.423, wherein the Hon'ble Supreme Court has observed and held that withdrawal of prosecution under sec.321 is exclusive power of the Public Prosecutor and his decision must be independent and not in obedience to directions from the District Magistrate or higher authorities and it should be on germane grounds and even before withdrawal of the prosecution, consent of the court

is necessary. It is further observed by the Hon'ble Supreme Court that when a case is pending in a criminal court, its procedure and progress are governed by the Criminal Procedure Code or other relevant statute. To intercept and recall an inquiry or trial in a court, save in the manner and to the extent provided for in the law, is itself a violation of law. Whatever needs to be done must be done in accordance with the law. It is further observed by the Hon'ble Supreme Court in the said decision that the function of administering justice under our constitutional order, belongs to those entrusted with judicial power. However, there are few exceptions and one of which is sec.321 of Criminal Procedure. It is further observed that under sec.321, the Public Prosecutor and not any executive authority, who is entrusted by the Code with the power to withdraw from a prosecution, and that also with the consent of the Court. It is further observed that the consent of the court under sec.321 as a condition for withdrawal is imposed as a check on the exercise of that power and the consent will be given only if the public justice in the larger sense is

promoted rather than subverted by such withdrawal.

9. Now considering the applications submitted by the concerned Public Prosecutor in the cases, it does not disclose that the concerned Public Prosecutor was satisfied with regard to withdrawal of the prosecution and the said applications are submitted only on the basis of decision taken by the State Government to withdraw the prosecution. As held by the Hon'ble Supreme Court in the aforesaid case, Public Prosecutor is not bound to obey the directions of the higher authorities, such application should be filed by the Public Prosecutor on germane ground. Under the circumstances, impugned orders dated 30th July 1994 and 20th January, 1995 passed by the learned Special Judge (Atrocity), Mehsana in discharging the respondents – original accused persons for the offences punishable under Sections 3(1), 5,8, 10 and 20 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 solely on the basis of the decision taken by the State Government, is contrary to the decision of the Hon'ble Supreme Court in the case of Subash Chandra (supra) and

contrary to Section 321 of the Cr.P.C. Under the circumstances, same requires to be quashed and set aside. It will be open for the Public Prosecutor on the basis of his subjective satisfaction and for germane reasons to withdraw the criminal cases. Under the circumstances, impugned orders cannot be sustained as the same are not on the basis of subjective satisfaction of the learned Public Prosecutor and was solely on the basis of the decision taken by the State Government to withdraw the prosecution.

10. For the reasons stated above, both the petitions succeed. The judgment and order dated 30th July, 1994 passed by the learned Special Judge(Atrocity), Mehsana in Special(Atrocity) Case No. 42 of 1994 as well as the judgment and order dated 20th January, 1995 passed by the learned Special Judge (Atrocity), Mehsana in Special (Atrocity) Case No. 136 of 1994 are hereby quashed and set aside. It is observed that it will be open for the learned Public Prosecutor to submit appropriate applications in accordance with Section 321 of the Cr.P.C. subject

to his own satisfaction and on germane grounds. As and when such applications are made, same shall be considered in accordance with law and on its own merits considering the decision of the Hon'ble Supreme Court in the case of Subash Chandra (supra). Rule is made absolute to the aforesaid extent accordingly in each of the petition.

[M.R.Shah, J.]

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